

that a person called to testify as an expert witness may be paid a higher fee to be fixed by the District Commander.

[CGD 82–002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

## Subpart H—Hearings

### § 5.501 General.

(a) A hearing in a suspension and revocation proceeding conducted under 46 U.S.C. chapter 77, is the adjudication of the case. It is presided over and is conducted under the exclusive control of an Administrative Law Judge in accordance with applicable requirements in 5 U.S.C. 551, *et seq.* (Administrative Procedure Act), and the regulations in this part. The Administrative Law Judge shall regulate and conduct the hearing in such a manner so as to bring out all the relevant and material facts, and to insure a fair and impartial hearing.

(b) The Administrative Law Judge shall be governed by 5 U.S.C. 557(d)(1) of the Administrative Procedure Act regarding *ex parte* communications relative to these proceedings.

(c) With the consent of the investigating officer and respondent, the Administrative Law Judge may hold a prehearing conference for the settlement or simplification of the issues involved in the case. A prehearing conference may be requested by the investigating officer, respondent, or the Administrative Law Judge and is subject to the following provisions:

(1) The Administrative Law Judge sets the time and place for the conference, or conference telephone call. The conference shall not be convened unless both the investigating officer and the respondent or their authorized representative are present.

(2) Admissions or statements made at a conference are not admissible in evidence at a hearing for any reason.

(3) The Administrative Law Judge, in his opening statement at the hearing, shall enter into the hearing record the time, date, place, and persons present at any prehearing conference held.

(4) If the investigating officer and the respondent agree at the prehearing conference to stipulate to facts or amend the charge sheet, either may introduce the stipulation at the hearing

which, upon the consent of the other, will become a part of the hearing record.

(d) The procedures below are usually followed:

(1) Administrative Law Judge's opening statement.

(2) Appearances of persons at the hearing.

(3) Verification of currently valid license, certificate and/or document held by respondent.

(4) The Administrative Law Judge advises the respondent of his or her rights.

(5) Exclusion of witnesses from the hearing room.

(6) Preliminary motions, objections and/or corrections to the charges and specifications.

(7) A reading of the charges with respondent's answer.

(8) Opening statement of investigating officer.

(9) Opening statement by or on behalf of the respondent or statements in mitigation if the respondent has admitted to the charge and specification or has answered *no contest*.

(10) Submission of evidence.

(11) Argument by the investigating officer and argument by or on behalf of the respondent.

(12) The investigating officer and respondent are given the opportunity to submit proposed findings and conclusions.

(13) The Administrative Law Judge renders findings and conclusions.

(14) Submission of prior record of the respondent and evidence in aggravation or mitigation.

(15) The Administrative Law Judge renders an order.

(16) The Administrative Law Judge serves complete written decision.

(17) The Administrative Law Judge advises the respondent of the right to appeal.

(18) The Administrative Law Judge declares that the hearing is closed.

### § 5.503 Record of the hearing.

(a) The Administrative Law Judge designates an official reporter for the hearing. The reporter shall prepare the record of the hearing, including the transcript if so directed by the Administrative Law Judge.

(b) The testimony and exhibits presented, together with all papers, requests, and rulings filed in the proceedings constitute the record of the hearing.

**§ 5.505 Public access to hearings.**

All hearings conducted pursuant to this part are open to the public, including representatives of the press, except when the Administrative Law Judge finds that the subject matter to be, or being, brought out in the evidence concerns classified material relating to national security, or when other circumstances exist which have been held to warrant a limitation or exception to the right of a public hearing in a United States District Court.

**§ 5.507 Disqualification of Administrative Law Judge.**

(a) In any suspension and revocation proceeding conducted under this part, the Administrative Law Judge may withdraw voluntarily from a particular case for reasons of a possible conflict of interest. In such event, the Administrative Law Judge shall immediately notify the Commandant of the desire to withdraw and the reasons therefor.

(b) In any case the investigating officer or the respondent may, in good faith, request the Administrative Law Judge to withdraw on the grounds of personal bias or other disqualification. The party seeking the Administrative Law Judge's disqualification shall file with the Administrative Law Judge a timely affidavit or statement sworn to before a Coast Guard officer of other official authorized to administer oaths, setting forth in detail the facts alleged to constitute the grounds for disqualification. The investigating officer or the respondent may present testimony of witnesses or, at minimum, an offer of proof to support these grounds. The Administrative Law Judge rules whether or not disqualification is warranted.

(c) If the person seeking disqualification takes exception to the Administrative Law Judge's ruling, that person may appeal such ruling to the Commandant. When such appeal is made, the Administrative Law Judge immediately forwards the affidavit or sworn statement with the decision thereon to

the Commandant. The Administrative Law Judge may proceed with the hearing unless it can be shown that a delay in the hearing pending a determination of the appeal will not be detrimental to the matters being adjudicated. The Administrative Law Judge ensures that all matters relating to such claims of disqualification appear affirmatively in the record.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 97-057, 62 FR 51042, Sept. 30, 1997]

**§ 5.509 Opening the hearing.**

The Administrative Law Judge opens the hearing at the time and place specified in the notice, administers all necessary oaths, and causes a complete record of the proceedings to be kept. The time and place of opening the hearing may be changed by the Administrative Law Judge by written notice served on the investigating officer and the respondent, either on the Administrative Law Judge's own motion or upon application of the investigating officer or respondent. Such change must be consistent with the rights of the respondent to a fair, impartial and timely hearing and the availability of witnesses.

**§ 5.511 Continuance of a hearing.**

The Administrative Law Judge may, either on the Administrative Law Judge's own motion or the motion of the investigating officer or respondent, continue the hearing from day to day or adjourn such hearing to a later date or to a different place by announcement at the hearing or by other appropriate notice. When determining whether to grant a continuance, the Administrative Law Judge gives careful consideration to the future availability of witnesses, the schedule of the vessel or vessels on which the respondent and/or witnesses may be employed, and to the nature of the charge and gravity of the offense.

**§ 5.513 Appearances.**

The appearances of the investigating officer and respondent and their representatives are entered in the record.